

Department of Public Health
and Human Services

Section:
CASE MANAGEMENT

TANF CASH ASSISTANCE

Subject:
Fair Hearing Procedure

► **Supersedes:** TANF 1506-3 (07/01/03); FMA and MA 1506-3 (12/01/98)

► **References:** ARM 37.5.101; 103; 301; .304, .305; .307, .313; .316; .318; .322; .325; .328; .331; .334; .337; 503; 505
ARM 37.82.101; ARM 37.78.102
42 CFR 431.200 through .246; 45 CFR 205.10

GENERAL RULE--The Department is responsible to assure the individual's right to due process and the right to a hearing as stated in Section 1506-1. An impartial official of the Department who has not been directly involved in the initial determination of the action in question conducts hearings. To meet due process standards, the Department has adopted these procedures.

EXCEPTION: A hearing need not be granted when either State or Federal law requires automatic benefit adjustments for recipient groups, unless the reason for an individual appeal is incorrect benefit computation.

► **HEARING
SITE**

All parties to the hearing congregate at one location. The hearing may be conducted by either a:

1. telephone conference call with the Hearing Officer in the Office of Fair Hearings;
2. face-to-face hearing, if a request for one is made by the claimant/representative, in which case:
 - a. All parties to the hearing and the Hearing Officer are at the same location and
 - b. The Hearing Officer will conduct the hearing in person.



NOTE: Unless all parties agree to a different location, hearings are held in the local OPA maintaining the claimant's case.

**GROUP
HEARINGS**

The Hearing Officer may respond to a series of individual requests for hearings by conducting a single group hearing. Such action is appropriate when:

1. The claimants involved agree to participate in a group rather than have an individual hearing;

2. The cases involve related issues of state and/or federal law, regulations or policies; and

NOTE: These related issues must be the only ones to be heard.

3. The claimants/representatives involved are each allotted time to present their case.

HEARING RECORD & TRANSCRIPTION

The hearing must be recorded and may have to be transcribed. The OPA is responsible for recording the proceedings and the transcription of the proceedings.

NOTE: Transcription is necessary only when a case is appealed to the Board of Public Assistance or upon a participant's request.

When a hearing is transcribed:

1. Text must be accurate. That is, neither words nor grammar can be changed from what was actually said;

NOTE: Words such as "uh" or "um" can be left out.

2. The last page must contain the statement: "I hereby certify that the above is a true and correct transcription of the Fair Hearing for (name of claimant). This transcript was prepared by (name of the typist preparing the transcript)";
3. Statement must be signed by transcriptionist; and
4. All pages must be numbered.

► SCHEDULING A HEARING/ NOTICE TO CLAIMANT

The Hearing Officer will send timely notice to the claimant/authorized representative by certified mail of the time, date, and place of the hearing. The claimant may request an earlier date as stated in Section 1506-1.

CLAIMANT'S RIGHTS AND ROLE

The claimant and/or representative has the right to examine the contents of his/her case file at any reasonable time prior to the hearing as well as during the hearing.



NOTE: Counties will be required to provide copies of all exhibits they plan to enter into the record to the claimant and Fair Hearing Officer at least five days prior to the hearing.

- **NOTE:** Upon request, make available without charge the specific materials necessary for a claimant or his/her representative to prepare for the administrative review and/or hearing.

The claimant/representative may not examine those portions of the case file which:

1. are precluded by federal regulation;
2. are precluded by directive of a medical professional; or
3. contain confidential information about someone other than the claimant.

The claimant/authorized representative may:

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1. examine all materials the department intends to introduce at the Fair Hearing;
 2. present his/her case to establish all pertinent facts and circumstances;
 3. bring witnesses and/or legal representation;
 4. advance arguments without undue interference;
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5. submit evidence to establish all pertinent facts and circumstances in the case at least five days prior to the hearing (evidence presented during the hearing must be considered even if it was not submitted five days prior to the hearing); and,
 6. question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

► DEPARTMENT'S ROLE

The County Director, designee or Central Office must attend the hearing and present the case for the Department. All employees of the OPA who were involved in making the decision being appealed or who have information relevant to the issues in dispute should also attend the hearing. In addition, the DPHHS attorney, regional and/or central office policy specialist, or other authorized Department representative may attend the hearing and present or participate in the case presentation.

- When the issue in dispute is complex and/or appears to have legal ramifications, the County Director/Designee shall contact their Regional Policy Specialist. The RPS, or after consultation, a Central Office Policy

Specialist, shall request assistance from the Department's Office of Legal Affairs. For example, issues related to funds placed in trusts or resource accessibility or if the claimant has indicated his/her legal counsel wishes to address state or federal law.



If the Hearing Officer requests a legal brief from all parties, the County Director/Designee shall promptly contact the Office of Legal Affairs and request them to prepare the brief.

The Department's representative may:

1. examine all materials the claimant intends to introduce at the hearing;
2. present its own evidence;



NOTE: Counties will be required to provide copies of all exhibits they plan to enter into the record to the claimant and Hearing Officer at least five days prior to the hearing.

3. bring witnesses to testify on the Department's behalf;
4. question or refute testimony of the claimant/authorized representative and his/her witnesses; and
5. confront and cross-examine the claimant/authorized representative and his/her witnesses.

**► MATERIALS
PRESENTED**

The Department shall introduce only documents, records, papers, and materials which were previously available for examination by the claimant/representative. Documents or records which the household will not otherwise have an opportunity to contest or challenge, shall not be introduced at the hearing or affect the hearing officer's decision.

EXCEPTION: The Hearing Officer may request a document, etc., to be made part of the record during the hearing. The claimant is then given time to review such evidence generally during a brief recess of the hearing.



NOTE: Evidence of hearsay (e.g., letters from doctors, neighbors or family members when the letter writer is not present at the hearing) may or may not be allowed. Whenever possible, it is preferable that the individual attend the hearing. Notarized affidavits are preferable to letters because the hearing officer will give more weight to a notarized affidavit.

**HEARING
OFFICER'S ROLE**The Hearing Officer may require

1. Witnesses;
2. A party to comply with reasonable and appropriate orders or requests not in conflict with the rules and necessary to assure the orderly conduct of pre-hearing and hearing procedures or to avoid unnecessary proceedings or expense;
3. Depositions upon oral examination, or written questions;
4. Written interrogatories; and,
5. Other materials as necessary for the hearing;

NOTE: For this purpose, the Hearing Officer may, upon request of any party to the hearing, issue subpoenas for witnesses or subpoenas duces tecum.

The Hearing Officer has the right to

1. Disqualify himself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;
2. Direct the parties to appear and confer in a pre-hearing conference to consider definition and simplification of the issues or other matters to aid in the orderly and efficient conduct of the hearing;
3. Allow, for good cause shown, a third party to represent a claimant as an authorized representative in those instances where written authorization of the claimant is not obtainable;
4. Take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public; and,
5. Grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure.

The Hearing Officer will:

1. administer required oaths or affirmations;
2. consider all relevant issues;
3. request, receive and make part of the record all evidence presented;

4. regulate the conduct of the hearing consistent with due process to ensure an orderly hearing; and
5. render a decision in the name of the Department's Board of Public Assistance consisting of:
 - a. findings of fact,
 - b. conclusions of law, and
 - c. a recommended order deciding the case based on the evidence and testimony in the hearing record.

► ACTION ON DECISION

The Hearing Officer's decision will be made within ninety (90) days from the date of the request. The decision becomes final unless the Department or the claimant appeals the decision within fifteen (15) days of the mailing of the Fair Hearing decision (Section 1506-4).

NOTE: No action can be taken on the case until the fifteen (15) day limit for appeal has passed.

After the appeal period has passed and no appeal has been filed with the Board of Public Assistance, if the decision is:

1. favorable to the claimant, the county must correct any under issuance of benefits within ten (10) days, or

NOTE: The county may take longer than ten (10) days if it elects to make the issuance correction in the next benefit month's issuance.

2. favorable to the Department (action is upheld), the county must establish an overissuance/overpayment claim to recover benefits issued pending the decision, if appropriate, and/or impose the adverse action prior to the next benefit issuance if timely notice can be provided.



NOTE: When the decision is regarding a TANF cash assistance sanction or ineligibility month action see TANF 702-4.

CLAIMANT'S WITNESS EXPENSES

The Hearing Officer may order the Department, or the local office where appropriate, to pay witness fees, mileage and other actual and necessary expenses of a witness subpoenaed at the claimant's request; if, in the judgment of the Hearing Officer, the witness's testimony is essential to the claimant's case.

The Hearing Officer may order, where relevant and useful, an independent medical assessment or professional evaluation from a source satisfactory to the claimant and the Department. The costs shall be paid by the Department, or where appropriate, the local office.

HEARING RECORD

A record of the hearing proceedings is compiled. The hearing record is made up of:

1. the Hearing Officer's decision;
2. the verbatim transcript (if requested) or recording of testimony and exhibits; and
3. all exhibits, papers, and requests filed in the proceeding.

The record is available to:

1. the claimant at a place accessible to him/her at a reasonable time for inspection and copying.

NOTE: The place may be the OPA or other location acceptable to all parties.

2. to the public for inspection and copying.

NOTE: Client name, address and any other identifying information must be kept confidential.

PROCEDURE

Responsibility

ACTION

Hearing Officer:

1. Schedule a Fair Hearing after:
 - a. the county has conducted an Administrative Review (Section 1506-2); and
 - b. the completed form DPHHS-LS-007, "Administrative Review Report" indicates the issues were not resolved at the Administrative Review level and the claimant wishes to proceed to hearing.

► OPA Office:

2. Arrange for a cassette recorder and tape to record the hearing.

Hearing Officer:

3. Initiate the proceedings by:

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- a. informing participants that the hearing is being recorded;
- b. introducing him/herself and giving location for the record;
- c. stating the case name and number;
- d. requesting each individual present to state their name, role in the hearing and location;
- e. observing any problems in voice transmission and arrange for a change in positioning of the microphone, if necessary;
- f. explaining the procedure, the right to speak and cross-exam, and the order of the proceedings; and
- g. advising those present to speak clearly, one at a time, and to identify him/herself before speaking.

OPA Office: 4. Begin recording the proceedings.

Hearing Officer: 5. Administer the oath; each person acknowledges the oath by voice.

OPA Office: 6. Explain:

- a. what the adverse action is;
- b. why the adverse action was taken; and
- c. why the Fair Hearing was requested.

7. Present information, documentation, witnesses, legal argument, and legal cites in support of the adverse action.

► Hearing Officer 8. Allow the claimant/representative to question the county representative and witnesses.

Claimant/
Representative: 9. Present all pertinent facts, circumstances, information, documentation and legal cites in support of his/her position.

► Hearing Officer: 10. Allow the county to question the claimant/representative and witnesses.

11. Conclude the hearing and inform the claimant a decision will be made within the appropriate time lines (Section 1506-1).

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12. Also inform all parties, if the decision is not satisfactory, an appeal must be filed within 15 days of the mailing of the decision (Section 1506-4).

OPA Office:

13. After the 15-day time limit for filing an appeal has elapsed, take appropriate action based on the decision made.

DB/KQ/NC/CC

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